

INTERGOVERNMENTAL AGREEMENT
by and between
THE CITY OF MEMPHIS
and
SHELBY COUNTY GOVERNMENT
for
THE CITY OF MEMPHIS AND SHELBY COUNTY TIRE REDEMPTION PROGRAM

This Intergovernmental Agreement is entered into on this _____ day of _____, 2009 by and between The City of Memphis (hereinafter "City") and Shelby County Government (hereinafter "County").

WITNESSETH

WHEREAS, the City of Memphis recently enacted Ordinance No. 5334 to regulate the proper disposal of waste tires and the registration of certain tire businesses and tire haulers within the City of Memphis; and

WHEREAS, Shelby County recently enacted Ordinance No. 386 to regulate the proper disposal of waste tires and the registration of tire businesses and tire haulers within Shelby County; and

WHEREAS, both the City and County Ordinances contain similar mirror provisions for the implementation of a joint Tire Redemption Program; and

WHEREAS, state law, as codified in T.C.A. § 12-9-101 et seq., more specifically T.C.A. § 12-9-104, provides that public agencies of this state may enter into an agreement with one another for joint or cooperative action; and

WHEREAS, the parties hereto desire to enter into this Agreement for the purpose of setting forth the terms under which the Tire Redemption Program will be implemented and administered.

NOW THEREFORE, for mutual promises and consideration, the parties do hereby agree as follows:

APPLICABLE LAW:

1. The City Council of Memphis, TN adopted a Ordinance No. 5334 on its third reading on November 3, 2009 and the City Mayor signed same into effect on November 20, 2009 which reads in pertinent part:

Redemption Program.

(a) For the purpose of assisting with the proper disposal of waste or scrap tires, any Shelby County resident, other than a tire business or waste tire carrier, generator, hauler, disposer, or sorter, presenting an illegally disposed used or waste tire to an authorized tire disposal or recycling facility shall receive a redemptive value of one dollar (1.00) per tire. The tire disposal or tire recycling facility receiving such tires shall require that the person presenting such tires for redemption execute an affidavit certifying that the tires were not stolen and that such person was not hired to haul such used or waste tires for disposal. Upon execution of such affidavit, the Office of Permits is hereby authorized to make payment to

the affiant after five (5) calendar days and shall properly record and retain documentation reflecting such payment for a period of twelve (12) months. Any person presenting a used or waste tire for redemption shall present valid Tennessee identification evidencing a Shelby County address. Information regarding the location of authorized waste tire disposal and tire recycling facilities shall be made available through the Office of Permits.

(b) The Redemption Program established herein shall commence immediately upon the effective adoption of this ordinance and shall expire within twelve (12) months of same, unless prior to such date the City Council, after conducting public hearings, finds that the purpose of the program has yet to be fully achieved, in which case it may extend the effective period of the program for an additional two (2) years.

Administration and Enforcement.

Administration of the Tire Redemption Program shall be the responsibility of the City of Memphis Permits Office.

2. The Shelby County Board of Commissioners adopted Ordinance 386 on the third reading as Item 19 on the October 26, 2009 and Acting Mayor, Joyce Avery, signed same into effect on October 30, 2009, which reads in pertinent part:

Redemption Program.

(a) For the purpose of assisting with the proper disposal of waste or scrap tires, any person, other than a tire business or waste tire carrier, generator, hauler, disposer, or sorter, presenting an illegally disposed used or waste tire to an authorized tire disposal or recycling facility shall receive a redemptive value of one dollar (1.00) per tire, notwithstanding the absence of the required tire marking included on such tires. The waste tire disposer or recycling facility receiving such tires shall require that the person presenting such tires for redemption execute an affidavit certifying that the tires were not stolen and that such person was not hired to haul such used or waste tires for disposal. Upon execution of such affidavit, the waste tire disposer or recycling facility is hereby authorized to make payment to the affiant and shall properly record and retain documentation reflecting such payment for a period of twelve (12) months. Information regarding the location of authorized waste tire disposers and tire recycling facilities shall be made available through the City of Memphis Permits Office.

(b) The Redemption Program established herein shall commence immediately upon the effective date of this article and shall expire within twelve (12) months of same, unless prior to such date the board of County Commissioners, after conducting public hearings, finds that the purpose of the program has yet to be fully achieved, in which case it may extend the effective period of the program for an additional two (2) years.

Administration and Enforcement.

Administration and enforcement of this Article shall be the responsibility of the City of Memphis Permits Office, Shelby County Sheriff's Office, Memphis and Shelby County Office of Construction Code Enforcement, and Shelby County Division of Public Works. The county, by and through

its authorized representatives, is hereby authorized to enter upon any property regulated by this ordinance, at reasonable or necessary times in order to properly inspect for violations.

3. In addition to the above, both the City and the County agree to operate this Agreement in accordance with any applicable local, state, or federal laws as they may now be in effect or as may change from time to time.
4. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, all parties agree that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

SCOPE OF WORK

1. The City shall administer the Tire Redemption Program (hereafter “Program”) pursuant to City Ordinance No. 5334 and Shelby County Ordinance No. 386, and the City's administrative policies and procedures governing such Program as promulgated by the City Permits Administrator.
2. City shall establish a public collection station at 3000 Elvis Presley Boulevard, Memphis, TN 38106. This station shall be open for collection during the hours of 7 a.m. to 3:30 p.m., Monday through Friday, and select Saturdays. The City shall contract directly with a vendor of its own selection for the collection, disposal, and recycling of each tire presented for redemption under the Program. A copy of the contract is attached hereto and incorporated herein by reference. The payment of such vendor's services shall be deducted from the joint contribution appropriated by the City and County totaling the sum of \$100,000.
3. Citizens shall be paid in accordance with the above herein stated ordinances for their participation in this Program, and in accordance with the rules and regulations promulgated by the City Permits Administrator relating thereto.
4. The City shall be solely responsible for the administration of the Tire Redemption program including but not limited to the collection of tires, the monitoring of costs, and the supervision of the recycling contractor.
5. The City shall be responsible for monitoring costs including but not limited to payment of fees to citizens, payment of workers to administer the program, and any costs associated with the recycling and/or disposal of tires. The County expressly limits its liability under this Agreement to its original contribution of \$50,000. Any amounts spent by City over and above this amount will be expressly denied for payment by the County unless otherwise agreed to in writing in advance of the expenditure or commitment thereof.

TERM AND COMPENSATION

1. The total budget for this Program is one hundred thousand dollars (\$100,000).
2. The City hereby agrees to make a one-time contribution to the Program in the amount of fifty thousand dollars (\$50,000).

3. The County hereby agrees to make a one-time contribution to the Program in the amount of fifty thousand dollars (\$50,000). The County payment shall be made to the City of Memphis for the administration of the Program.
4. The City shall provide an accounting of the Tire Redemption Program funds to the County on a weekly basis of funds expended in the administration of this program.
5. This Program shall run from the date of execution through a period of twelve months or until the funds for this program have been expended, at which time the Program and this Agreement shall automatically terminate, unless otherwise extended by mutual written agreement.
6. In the event additional funding is provided to this Program, the Parties hereto may extend this Agreement by written mutual agreement to the extent permissible by the enabling ordinances.

GENERAL TERMS AND CONDITIONS:

1. This Agreement may be terminated by either party upon five (5) business days written notice to the other party. Notwithstanding the foregoing, in the event sufficient funds are not appropriated by the Memphis City Council or the Shelby County Commissioners, for any fiscal period, for the administration of the Tire Redemption Program this contract will terminate immediately and the program shall cease.
2. Both parties shall comply with all applicable federal, state and local laws in the performance of its duties and obligations herein.
3. The City shall make and keep as the same accrue, full and complete books, records, and other documents related to this Agreement for a minimum period of three (3) full years after the contract end date or from the date of final payment under this Agreement, whichever is later. The City shall allow the County, during normal business hours and at all reasonable times, to examine, inspect, and audit any and all of the City's books, records, and other documents, which are maintained or kept by the City in its official functions in carrying out the City's duties and responsibilities under this Agreement.
4. Nothing in this Agreement shall be deemed to represent that either party, or any of its employees or agents, are the agents, representatives, or employees of the other party. Each party shall be an independent service provider over the details and means for performing the services under this Agreement. Anything in this Agreement which may appear to give either party the right to direct the other party as to the details of the performance of the services under this Agreement or to exercise a measure of control over the other party is solely for purposes of compliance with local, state and federal regulations and means that the party will follow the desires of the other party only as to the intended results of the scope of this Agreement. It is further expressly agreed and understood by City that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the County; that City has been retained by the County to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for the services performed (not wages).
5. Both parties covenant that it has no public or private interest and will not acquire, directly or indirectly, any interest which would conflict in any manner with the performance of the services. The City warrants that no part of the total Agreement Fee shall be paid directly or indirectly to

any officer or employee of the County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, or subcontractor to the City in connection with any work contemplated or performed relative to this Agreement.

6. Both parties warrant that it has not employed or retained any company or person other than a bona fide employee working solely for such party, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for such party any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the other party will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.
7. The parties recognize that each party is a governmental entity as defined by Tennessee Code Annotated Section 29-20-101 et. seq. and is responsible for negligent acts and/or omissions of its agents or employees. The parties agree that neither party shall be responsible for personal injury or property damage or other loss suffered by any person or entity except that resulting from its own negligence, and nothing in this Agreement shall be construed as creating an obligation to indemnify the other party against that party's own negligence. The foregoing notwithstanding, it is the intent of the parties hereto that neither party, by virtue of entering into this Agreement assume liabilities that are greater than those set forth in the Tennessee Governmental Tort Liability Act, T.C.A. Section 29-20-101, *et seq.*, or an amount of liability greater than set forth in T.C.A. Section 29-20-101, et seq.
8. Both parties hereby agree, warrant, and assure compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, state or local law.
9. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written. This Agreement may be modified or amended only by written instrument signed by both parties.
10. If any provision of this Agreement is held to be unlawful, invalid or unenforceable for any reason, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from.
11. No waiver of any term, condition, default, or breach of this Agreement, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Agreement or of such document. No delay or failure to enforce any provision in this Agreement or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

12. Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the authorized agent or by First Class or U.S. Mail, return receipt requested, to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided. Notices shall be deemed received (i) if by hand delivery, on date of delivery with a signed receipt; (ii) if U.S. Mail, on date of receipt appearing on the return receipt card; (iii) if by overnight courier, on date receipt is confirmed by such courier service.

COUNTY: Shelby County Government
Attn: Tom Moss
584 Adams
Memphis, TN 38103

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

CITY: City of Memphis
Attn: Director of Public Works Division
125 North Main, Room 608
Memphis, TN 38103-2079

and

City of Memphis
Attn: City Attorney
125 N. Main, Room 336
Memphis, TN 38103

13. In the event the Tire Redemption Program is discontinued due to the City's inability to perform its duties hereunder, the City hereby agrees to make a final accounting and return to the County its pro rata share of any remaining funds.

IN WITNESS HEREOF, The parties have executed this Agreement on the date first written above.

CITY OF MEMPHIS

Approved as to form:

A C Wharton, Jr., Mayor

Herman Morris, Jr., City Attorney

Attest:

Division of Public Works

Deputy Comptroller

Dwan Gilliom, Director

SHELBY COUNTY GOVERNMENT

Joe Ford, Interim Mayor

Approved as to form and legality:

Assistant County Attorney, Contracts Administration